

Leslie Bryan Hart, Esq. (SBN 4932)  
LIONEL SAWYER & COLLINS  
50 West Liberty Street, Suite 1100  
Reno, NV 89501  
Telephone: 775-788-8666  
Facsimile: 775-788-8682  
lhart@lionelsawyer.com

(Admitted Pro Hac Vice)  
Daralyn J. Durie, Esq.  
Joseph C. Gratz, Esq.  
Genevieve P. Rosloff, Esq.  
DURIE TANGRI LLP  
217 Leidesdorff Street  
San Francisco, CA 94111  
Telephone: 415-362-6666  
Facsimile: 415-236-6300  
ddurie@durietangri.com  
jgratz@durietangri.com  
grosloff@durietangri.com

Attorneys for Defendant and Counter-Plaintiff  
WEST CORP.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ALTO VENTURES, INC.,

Plaintiff,

v.

FIVE9, INC., TELETECH HOLDINGS, INC.,  
TRANSERA COMMUNICATIONS, INC.,  
WEST CORP. and WORKING SOLUTIONS,  
INC.,

Defendants.

WEST CORP.,

Counter-Plaintiff,

v.

ALTO VENTURES, INC.,

Counter-Defendant.

Case No. 2:11-cv-1056-PMP-CWH

**WEST CORP.'S ANSWER AND  
COUNTERCLAIMS TO ALTO VENTURES,  
INC.'S FIRST AMENDED COMPLAINT**

Ctrm: LV Courtroom 7C  
Judge: Honorable Philip M. Pro

1 Defendant West Corp. (“West”) hereby replies to the allegations set forth in Plaintiff Alto  
2 Ventures, Inc.’s (“Alto”) First Amended Complaint for Patent Infringement (“Complaint”) as follows:

3 **PARTIES**

4 1. West admits, on information and belief, the allegations in Paragraph 1 of the Complaint.

5 2. West lacks knowledge or information sufficient to form a belief as to the truth of the  
6 allegations in this paragraph and, on that basis, denies those allegations.

7 3. West lacks knowledge or information sufficient to form a belief as to the truth of the  
8 allegations in this paragraph and, on that basis, denies those allegations.

9 4. West lacks knowledge or information sufficient to form a belief as to the truth of the  
10 allegations in this paragraph and, on that basis, denies those allegations.

11 5. West lacks knowledge or information sufficient to form a belief as to the truth of the  
12 allegations in this paragraph and, on that basis, denies those allegations.

13 6. West denies the allegations in Paragraph 6 of the Complaint insofar as they suggest that  
14 West is subject to personal jurisdiction in Nevada. Otherwise, West admits the allegations in Paragraph  
15 6 of the Complaint.

16 7. West lacks knowledge or information sufficient to form a belief as to the truth of the  
17 allegations in this paragraph and, on that basis, denies those allegations.

18 **JURISDICTION AND VENUE**

19 8. West admits that Alto purports to have brought this action under the patent laws of the  
20 United States, Title 35, United States Code, and more particularly, 35 U.S.C. §§ 271 *et seq.*

21 9. West admits the allegations in Paragraph 9 of the Complaint.

22 10. West denies the allegations made against it in this paragraph. West lacks knowledge or  
23 information sufficient to form a belief as to the truth of the allegations in this paragraph made against the  
24 other defendants, and, on that basis, denies those allegations.

25 11. West denies the allegations in Paragraph 11 of the Complaint.

26 **BACKGROUND**

27 12. West lacks knowledge or information sufficient to form a belief as to the truth of the  
28 allegations in this paragraph and, on that basis, denies those allegations.

13. West lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies those allegations.

14. West lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies those allegations.

15. West lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies those allegations.

16. West lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies those allegations.

17. West lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies those allegations.

18. West lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies those allegations.

19. West lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies those allegations.

**COUNT I: INFRINGEMENT OF U.S. PATENT NO. 7,418,092**

20. West refers to and incorporates all preceding paragraphs as though fully set forth herein.

21. West denies the allegations of the first sentence of this paragraph. West lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies those allegations.

22. West lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies those allegations.

23. West lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies those allegations.

24. West lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies those allegations.

25. West lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies those allegations.

26. West denies the allegations of Paragraph 26 of the Complaint.

27. West lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies those allegations.

28. West denies the allegations in Paragraph 28 of the Complaint insofar as they are made against West. West lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies those allegations.

29. West denies the allegations in Paragraph 29 of the Complaint insofar as they are made against West. West lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and, on that basis, denies those allegations.

30. West denies the allegations in Paragraph 30 of the Complaint.

31. West denies the allegations in Paragraph 31 of the Complaint.

32. West lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and, on that basis, denies those allegations.

33. West denies the allegations in Paragraph 33 of the Complaint.

### **PRAYER FOR RELIEF**

West denies that Alto is entitled to any of the relief sought in the Complaint or any other relief.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

##### **(Failure to State a Claim)**

34. Alto's claims are barred, in whole or in part, as Alto has failed to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

##### **(35 U.S.C. § 101)**

35. West alleges on information and belief that one or more claims of the '092 Patent is invalid for failure to meet the conditions for patentability set forth in 35 U.S.C. § 101.

#### **THIRD AFFIRMATIVE DEFENSE**

##### **(35 U.S.C. § 102)**

36. West alleges on information and belief that one or more claims of the '092 Patent is invalid for failure to meet the conditions for patentability set forth in 35 U.S.C. § 102.

**FOURTH AFFIRMATIVE DEFENSE**

**(35 U.S.C. § 103)**

37. West alleges on information and belief that one or more claims of '092 Patent is invalid for failure to meet the conditions for patentability set forth in 35 U.S.C. § 103.

**FIFTH AFFIRMATIVE DEFENSE**

**(35 U.S.C. § 112)**

38. West alleges on information and belief that one or more claims of the '092 Patent is invalid for failure to meet the conditions for patentability set forth in 35 U.S.C. § 112.

**SIXTH AFFIRMATIVE DEFENSE**

**(Laches)**

39. West alleges that Alto's claim for infringement of the '092 patent is barred by the doctrine of laches.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Reservation of Additional Affirmative Defenses)**

40. West expressly reserves the right to assert and pursue additional defenses.

**COUNTERCLAIMS**

For its Counterclaims against Plaintiff Alto Ventures, Inc. ("Alto"), Counter-Plaintiff West Corp. ("West") alleges as follows:

**PARTIES**

41. West is a corporation organized under the laws of Delaware, with its principal place of business in Omaha, Nebraska.

42. Alto is a corporation organized under the laws of Nevada, with its principal place of business in Henderson, Nevada.

**JURISDICTION AND VENUE**

43. This action arises under the patent laws of the United States of America, 35 U.S.C. §§ 1 *et seq.* and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* Subject matter jurisdiction is proper pursuant to Title 35 of the United States Code, § 271 and Title 28 of the United States Code, §§ 1338(a), 2201(a) and 2202.

44. This Court has personal jurisdiction over Alto because, among other things, it has consented to jurisdiction by filing the instant case, and because, on information and belief, Alto's principal place of business is located in this District.

45. Venue is proper in this District pursuant to Title 28, United States Code, §§ 1391(b) and 1400(b).

### **COUNT I**

#### **(Declaratory Judgment of Non-Infringement of the '092 Patent)**

46. West refers to and incorporates all preceding paragraphs as though fully set forth herein.

47. As a result of the charges of infringement against West, an actual controversy exists as to infringement of the '092 Patent.

48. West has not infringed, and is not now infringing, the '092 Patent, either literally or under the Doctrine of Equivalents.

49. West has not caused others to infringe, and is not now causing others to infringe the '092 Patent either willfully, recklessly, or otherwise.

### **COUNT II**

#### **(Declaratory Judgment of Invalidity of the '092 Patent)**

50. West refers to and incorporates all preceding paragraphs as though fully set forth herein.

51. As a result of the charges of infringement against West, an actual controversy exists as to the validity of the '092 patent.

52. The '092 patent is invalid for failure to comply with one or more of the requirements of Title 35 of the United States Code including but not limited to §§ 101, 102, 103, 111, 112, 115, and 116.

### **RESERVATION OF COUNTERCLAIMS**

53. West reserves the right to assert any other counterclaim(s) that discovery may reveal.

### **PRAYER FOR RELIEF**

WHEREFORE, West Corp. prays for the following relief:

A. That the Court enter judgment in favor of West and against Alto, and dismiss Alto's Complaint with prejudice, and that Alto recover nothing thereon;

1 B. For an entry of judgment declaring '092 Patent not infringed by West, or by the  
2 use of West products or methods, whether literally or under the Doctrine of Equivalents, and for entry of  
3 judgment that West does not infringe directly or by contributing to the infringement of others or by  
4 inducing others to infringe;

5 C. For an entry of judgment declaring the '092 Patent and all claims in the '092  
6 Patent invalid; and

7 D. For such other and further relief as the Court may deem just and fair.

8 **DEMAND FOR JURY TRIAL**

9 Pursuant to Federal Rule of Civil Procedure 38, West demands a trial by jury of all issues so  
10 triable.

11  
12 Dated: December 6, 2011

LIONEL SAWYER & COLLINS

13  
14 By: /s/ Joseph C. Gratz  
15 Leslie Bryan Hart, Esq. (SBN 4932)  
16 50 West Liberty Street, Suite 1100  
17 Reno, NV 89501  
Telephone: 775-788-8666  
Facsimile: 775-788-8682  
lhart@lionelsawyer.com

18 (Admitted Pro Hac Vice)  
19 Daralyn J. Durie, Esq.  
20 Joseph C. Gratz, Esq.  
21 Genevieve P. Rosloff, Esq.  
22 DURIE TANGRI LLP  
23 217 Leidesdorff Street  
24 San Francisco, CA 94111  
25 Telephone: 415-362-6666  
26 Facsimile: 415-236-6300  
27 ddurie@durietangri.com  
28 jgratz@durietangri.com  
grosloff@durietangri.com

Attorneys for Defendant and Counter-Plaintiff  
WEST CORP.

**CERTIFICATE OF SERVICE**

I certify that all counsel of record is being served on December 6, 2011 with a copy of this document via the Court's CM/ECF system.

/s/ Joseph C. Gratz  
Joseph C. Gratz